

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221377.2

DATE: February 14, 1986

MATTER OF: Duro Paper Bag Manufacturing Co.--
Request for Reconsideration

DIGEST:

Bid of bidder, which alleged and then withdrew allegation of mistake, should be accepted where (1) there is no evidence that a mistake was made; (2) the bid prices are not so far out of line as to obviously be an error; and (3) the integrity of competitive bidding system is not adversely affected. Rejecting the bid under the circumstances would undermine the "firm bid" rule and the integrity of the sealed bid system.

Duro Paper Bag Manufacturing Co. (Duro) requests reconsideration of our decision denying its protest in Duro Paper Bag Manufacturing Co., B-217227, Jan. 3, 1986, 65 Comp. Gen. ____, 86-1 C.P.D. ¶ _____. We deny the request for reconsideration.

Duro protested the award of three items to the low bidder, Trinity Paper and Plastics Corporation (Trinity), under invitation for bids (IFB) SFCG-34A-84-070, issued by the General Services Administration (GSA) for multiple items of paper grocery bags. Trinity submitted bid prices on the three items that were significantly lower (13 to 23 percent) than those of Duro, the next low bidder. Consequently, GSA asked Trinity to verify these bid prices because it suspected a mistake in bid. Trinity alleged a mistake caused by its failure to consider, in formulating its bid, a price increase of its supplier for these items. Trinity requested that its bid for these items be withdrawn. The only evidence submitted to support this mistake allegation was a single sheet of paper on the supplier's letterhead containing a price list effective a month prior to bid opening.

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The agency then requested further information to support the allegation of mistake because this price increase would seemingly affect Trinity's prices on the other bid items on which there was no apparent mistake. However, Trinity advised that it had no additional substantiation, such as bid worksheets, to support its mistake allegation.

Several days later, Trinity elected to withdraw its mistake claim and indicated that it wished to honor its bid prices for these items. After some review, Trinity was then awarded these items, and Duro protested.

We found the allegation of mistake in Trinity's bid was essentially unsupported by any evidence. We also found that GSA reasonably concluded that Trinity's bid prices were not so far out of line as to obviously be an error. Finally, we found that the protection of the competitive bidding system did not require the rejection of Trinity's bid. Accordingly, we denied Duro's protest. See Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(g)(5) (1984).

Duro contends that our decision failed to consider all relevant information. Duro contends that the paper market prices shifted downward from the time Trinity submitted its bid to when it decided to withdraw its mistake claim, which made it economically feasible for Trinity to accept the award. However, while the drop in suppliers' prices may have occurred, this is not evidence that, in fact, a mistake was made.

The only evidence of mistake in this case was the disparity in prices between Trinity's bid, Duro's bid and the current contract prices, and Trinity's unsupported allegation of mistake. Duro has produced no additional evidence, but only speculations, that Trinity's alleged mistake was bona fide.

Duro claims our decision undermines the integrity of the competitive bidding system by permitting a bidder to claim a mistake and then take advantage of the passage of time to elect to accept the bid when it becomes economically feasible or when the bidder ascertains that it may lose the award. However, if a bidder were permitted to withdraw its bid with only an allegation of mistake, this would also have

an adverse impact on the competitive bidding system. Bids on formally advertised or sealed bid procurements are required to be firm and not subject to withdrawal, unless there is a bona fide mistake in bid. If a bidder were permitted to withdraw its "firm bid" with an allegation, but no evidence of a mistake, the "firm bid" rule and, thus, the integrity of the formally advertised or sealed bid system would be undermined by bidders who reviewed the other bidders' prices and the market before deciding to honor their bids.

Duro also interprets our decision as requiring "clear and convincing" evidence of a mistake to permit withdrawal of a bid. Although the contracting officer mentioned this standard to Trinity when he was attempting to obtain evidence of a mistake, GSA and our decision recognized that withdrawal of the bid would be required if there was evidence of a bona fide mistake.

In summary, Duro's arguments on reconsideration are essentially a restatement of the arguments that it made in its original protest.

Harry R. Van Cleve

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General Counsel